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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

MARVIN JAMES GEORGE,

Defendant and Appellant.

D074744

(Super. Ct. No. SCD275691)

APPEAL from a judgment of the Superior Court of San Diego County,
Timothy R. Walsh, Judge. Affirmed in part, sentence vacated and remanded for
resentencing.

John L. Staley, under appointment by the Court of Appeal, for Defendant and
Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, Michael Pulos and Teresa
Torreblanca, Deputy Attorneys General, for Plaintiff and Respondent.

Marvin James George pleaded guilty to driving under the influence of alcohol causing injury (Veh. Code, § 23153, subd. (a); count 1), driving with a measurable blood alcohol level causing injury (Veh. Code, § 23153, subd. (b); count 2); and hit and run with injury (Veh. Code, § 20001, subd. (a); count 3). He also admitted infliction of great bodily injury (Pen. Code,¹ § 12022.7, subd. (a)); admitted two serious felony prior conviction (§ 667, subd. (a)(1); two strike priors (§ 667, subds. (b)-(i); and a prison prior (§ 667.5, subd. (b)).

The trial court denied a motion to strike the "strike" priors and sentenced George to an indeterminate term of 25 years-to-life, consecutive to a 14-year determinate term.

George appeals challenging only his sentence. He contends, and the Attorney General agrees, his case should be remanded to allow the trial court to exercise its newly provided discretion to strike the serious felony prior convictions under section 1385 in the interest of justice.

As we will explain, the parties correctly argue the amendments to section 1385, which were enacted in Senate Bill No. 1393 (effective Jan. 1, 2019), must be available to defendants whose cases were not final on appeal as of the effective date of that statute.

¹ All further statutory references are to the Penal Code unless otherwise specified.

We will vacate the current sentence and remand the matter to the trial court with directions to allow George to bring a motion to strike the serious felony prior conviction and to exercise its discretion as it deems appropriate².

DISCUSSION

Under the law as it was in effect at the time of sentencing in this case, trial courts lacked the discretion to strike a serious felony prior conviction in the interest of justice under section 1385. (*People v. Valencia* (1989) 207 Cal.App.3d 1042, 1045-1047). Senate Bill No. 1393, effective January 1, 2019, amended section 1385 to permit trial courts to strike serious felony prior convictions in the interest of justice.

In *People v. Garcia* (2018) 28 Cal.App.5th 961, 971-974, Division Two of this court held that Senate Bill No. 1393 is retroactive to cases not final on appeal as of the effective date of Senate Bill No. 1393. Both parties to this appeal agree with the decision in *Garcia* and urge us to remand the case for resentencing. We are persuaded by the reasoning in *Garcia* and will remand this case to the trial court to permit George to bring a motion to strike the serious felony prior convictions in the interest of justice. We offer no opinion as to how the court should exercise its discretion.

DISPOSITION

The sentence is vacated, and the matter remanded for resentencing to allow the trial court to exercise its discretion to strike the serious felony prior convictions. If the

² The facts of the underlying offenses are not relevant to the issue presented by this appeal. Accordingly, we will omit the traditional statement of facts.

court strikes the priors it shall resentence accordingly. If the court declines to strike the priors convictions it shall reinstate the judgment. In all other respects the judgment is affirmed.

HUFFMAN, J.

WE CONCUR:

McCONNELL, P. J.

IRION, J.